

1 ROBERT W. FERGUSON
2 Attorney General
3 NOAH GUZZO PURCELL, WSBA #43492
Solicitor General
4 KRISTIN BENESKI, WSBA #45478
First Assistant Attorney General
5 COLLEEN M. MELODY, WSBA #42275
Civil Rights Division Chief
6 ANDREW R.W. HUGHES, WSBA #49515
LAURYN K. FRAAS, WSBA #53238
7 Assistant Attorneys General
TERA M. HEINTZ, WSBA #54921
(application for admission forthcoming)
Deputy Solicitor General
8 800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
9 (206) 464-7744

10 **UNITED STATES DISTRICT COURT**
EASTERN DISTRICT OF WASHINGTON

11 STATE OF WASHINGTON, et al.,

12 NO. 1:23-cv-03026

Plaintiffs,

13 v.
14 PLAINTIFF STATES' MOTION
15 TO EXCEED PAGE LIMITS FOR
MOTION FOR PRELIMINARY
INJUNCTION

16 UNITED STATES FOOD AND
DRUG ADMINISTRATION, et al.,

17 Defendants.
18 03/27/2023
Without Oral Argument

The Plaintiff States of Washington, Oregon, Arizona, Colorado, Connecticut, Delaware, Illinois, Nevada, New Mexico, Rhode Island, Vermont, and the Attorney General of Michigan (Plaintiff States) respectfully move, pursuant to Local Civil Rule 7(f)(5), to exceed the default page limits for their contemporaneously-filed Motion for Preliminary Injunction.

1 The Plaintiff States seek this relief because this is a critically important
 2 case of nationwide interest concerning access to abortion care. More than
 3 22 years ago, the United States Food and Drug Administration approved
 4 mifepristone as part of a two-drug regimen to end an early pregnancy based on
 5 its thorough and comprehensive review of the scientific evidence. Since this
 6 regimen was approved in 2000, mifepristone has been used approximately
 7 5.6 million times in the United States and is a safe and proven early abortion
 8 option. But FDA has continued to hamper access to this critical, time-sensitive
 9 drug by singling out mifepristone—and the people in the Plaintiff States who rely
 10 on it for their reproductive health care—for a unique set of restrictions known as
 11 a Risk Evaluation and Mitigation Strategy (REMS). The amended REMS for
 12 mifepristone, which went into effect on January 3, 2023, unduly burdens
 13 providers from prescribing, pharmacies from dispensing, and patients from
 14 accessing mifepristone. On February 23, 2023, the Plaintiff States filed a
 15 Complaint challenging the amended REMS as arbitrary and capricious and
 16 unconstitutional. The Plaintiff States now move for a preliminary injunction.

17 Excess page limitations. The Plaintiff States have good cause to exceed the
 18 10-page limit set forth in the local rules. LCivR 7(f)(5), (f)(2); *see also Pac.*
 19 *Aerospace & Elecs., Inc. v. Taylor*, 295 F. Supp. 2d 1188, 1204 n.29 (E.D. Wash.
 20 2003) (“Preliminary injunction motions often justify treatment as dispositive
 21 motions in determining the applicable rule for length of briefs.”). While
 22

1 Plaintiff States have attempted to be as concise as possible, the breadth and
 2 complexity of this multi-state lawsuit has necessitated substantial briefing to
 3 ensure the issues are adequately presented to the Court.

4 The amended REMS—and the underlying statutory and factual
 5 background—is intricate and multi-faceted. Fully informing the Court of its
 6 requirements and far-reaching implications required significant detail. Further,
 7 the required showings of likelihood of success on the merits and irreparable harm
 8 under Fed. R. Civ. P. 65 are complex, particularly in this factual and statutory
 9 context. Adequately briefing the Court on these issues required the
 10 Plaintiff States to provide detailed—and often highly technical—explanations as
 11 to the role of mifepristone in reproductive health care, the statutory requirements
 12 for FDA regulations, the scientific evidence before the FDA, and the impact of
 13 the amended REMS on hospitals, clinics, pharmacies, and patients across the
 14 nation. In addition, the Plaintiff States have filed declarations from a multitude
 15 of fact and expert witnesses in support of their motion for preliminary injunction,
 16 and incorporating this testimony required additional pages.

17 Opposing party's position. As of this date, no counsel for the Defendants
 18 have appeared in this case. Consequently, the Plaintiff States are unable to state
 19 the Defendants' position on this motion as required by LCivR 7(f)(5).

20 For the foregoing reasons, the Plaintiff States respectfully request that the
 21 Court grant this motion and consider the Plaintiff States'

1 contemporaneously-filed Motion for Preliminary Injunction as filed. A proposed
2 order is submitted herewith.

3 DATED this 24th day of February 2023.

4 ROBERT W. FERGUSON
5 Attorney General

6 */s/ Kristin Beneski*
7 NOAH GUZZO PURCELL, WSBA #43492
Solicitor General
8 KRISTIN BENESKI, WSBA #45478
First Assistant Attorney General
COLLEEN M. MELODY, WSBA #42275
9 Civil Rights Division Chief
ANDREW R.W. HUGHES, WSBA #49515
LAURYN K. FRAAS, WSBA #53238
10 Assistant Attorneys General
TERA M. HEINTZ, WSBA #54921
(application for admission forthcoming)
11 Deputy Solicitor General
12 800 Fifth Avenue, Suite 2000
Seattle, WA 98104-3188
13 (206) 464-7744
14 *Attorneys for Plaintiff State of Washington*

15 ELLEN F. ROSENBLUM
16 Attorney General of Oregon

17 */s/ Marc Hull*
18 SANDER MARCUS HULL WSBA #35986
Senior Assistant Attorney General
YOUNGWOO JOH OSB #164105*
19 Assistant Attorney General
Trial Attorneys
Tel (971) 673-1880
Fax (971) 673-5000
marcus.hull@doj.state.or.us
youngwoo.joh@doj.state.or.us
21 *Attorneys for State of Oregon*

**Application for pro hac vice admission
forthcoming*

KRIS MAYES
Attorney General of Arizona

/s/ Daniel C. Barr

Daniel C. Barr (Arizona No. 010149)*
Chief Deputy Attorney General
Office of the Attorney General of Arizona
2005 N. Central Ave.
Phoenix, AZ 85004-1592
Phone: (602) 542-8080
Email: Daniel.Barr@azag.gov
Attorney for Plaintiff State of Arizona

**Application for pro hac vice admission
forthcoming*

PHILIP J. WEISER
Attorney General of Colorado

/s/ Eric Olson

ERIC OLSON, CO #36414*
Solicitor General
MICHAEL MCMASTER, CO #42368*
Assistant Solicitor General
Office of the Attorney General
Colorado Department of Law
1300 Broadway, 10th Floor
Denver, CO 80203
Phone: (720) 508-6000
Attorneys for Plaintiff State of Colorado

**Applications for pro hac vice admission forthcoming*

1 WILLIAM TONG
2 Attorney General of Connecticut

3 /s/ Joshua Perry
4 Joshua Perry*
5 Solicitor General
6 Office of the Connecticut Attorney General
7 165 Capitol Ave, Hartford, CT 06106
8 Joshua.perry@ct.gov
9 (860) 808-5372
10 Fax: (860) 808-5387
11 *Attorney for Plaintiff State of Connecticut*

12 *Application for pro hac vice admission
13 forthcoming

14 KATHLEEN JENNINGS
15 Attorney General of Delaware

16 /s/ Vanessa L. Kassab
17 VANESSA L. KASSAB*
18 Deputy Attorney General
19 Delaware Department of Justice
20 820 N. French Street
21 Wilmington, DE 19801
22 302-683-8899
vanessa.kassab@delaware.gov
Attorney for Plaintiff State of Delaware

*Application for pro hac vice admission
forthcoming

KWAME RAOUL
Attorney General of Illinois

18 /s/ Liza Roberson-Young
19 Liza Roberson-Young*
20 Public Interest Counsel
21 Office of the Illinois Attorney General
22 100 West Randolph Street
Chicago, IL 60601

1 Phone: (872) 272-0788
2 E.RobersonYoung@ilag.gov
3 Attorney for Plaintiff State of Illinois

4 *Application for pro hac vice admission
forthcoming

5 DANA NESSEL
6 Attorney General of Michigan

7 /s/ Stephanie M. Service

8 Stephanie M. Service (P73305)*
9 Assistant Attorney General
Michigan Department of Attorney General
Health, Education & Family
Services Division
10 P.O. Box 30758
Lansing, MI 48909
(517) 335-7603
11 ServiceS3@michigan.gov
12 Attorney for Plaintiff Attorney General of
Michigan

13 *Application for pro hac vice admission
forthcoming

15 AARON D. FORD
16 Attorney General of Nevada

17 /s/ Heidi Parry Stern

18 Heidi Parry Stern (Bar. No. 8873)*
19 Solicitor General
Office of the Nevada Attorney General
555 E. Washington Ave., Ste. 3900
Las Vegas, NV 89101
HStern@ag.nv.gov
20 Attorney for Plaintiff State of Nevada

21 *Application for pro hac vice admission
forthcoming

1 RAÚL TORREZ
2 Attorney General of New Mexico

3 /s/ Aletheia Allen
4 Aletheia Allen*
5 Solicitor General
6 New Mexico Office of the Attorney General
7 201 Third St. NW, Suite 300
8 Albuquerque, NM 87102
9 AAllen@nmag.gov
10 Attorney for Plaintiff State of New Mexico

11 *Application for pro hac vice admission
12 forthcoming

13 PETER F. NERONHA
14 Attorney General of Rhode Island

15 /s/ Julia C. Harvey
16 JULIA C. HARVEY #10529*
17 Special Assistant Attorney General
18 150 S. Main Street
19 Providence, RI 02903
20 (401) 274-4400 x2103
21 Attorney for Plaintiff State of Rhode Island

22 *Application for pro hac vice admission
23 forthcoming

24 CHARITY R. CLARK
25 Attorney General of Vermont

26 /s/ Eleanor L.P. Spottswood
27 ELEANOR L.P. SPOTTSWOOD*
28 Solicitor General
29 109 State Street
30 Montpelier, VT 05609-1001
31 (802)793-1646
32 eleanor.spottswood@vermont.gov
33 Attorney for Plaintiff State of Vermont

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

**Application for pro hac vice admission
forthcoming*

PLAINTIFF STATES' MOTION TO
EXCEED PAGE LIMITS FOR
MOTION FOR PRELIMINARY
INJUNCTION

1 CERTIFICATE OF SERVICE

2 I hereby certify that on February 24th, 2023, I electronically filed the
3 foregoing with the Clerk of the Court using the CM/ECF System, which in turn
4 automatically generated a Notice of Electronic Filing (NEF) to all parties in the
5 case who are registered users of the CM/ECF system. The NEF for the foregoing
6 specifically identifies recipients of electronic notice. I hereby certify that I have
7 mailed by United States Postal Service, and sent via electronic mail, the
8 document to the following non-CM/ECF participants:

9 United States Food and Drug Administration
10 Chief Counsel, Food and Drug Administration
11 ATTENTION: LITIGATION
12 White Oak Building 31, Room 4544
13 10903 New Hampshire Ave., Silver Spring, MD 20993-0002
14 OC-OCC-FDA-Litigation-Mailbox@fda.hhs.gov

15 Robert M. Califf, Commissioner
16 Chief Counsel, Food and Drug Administration
17 ATTENTION: LITIGATION
18 White Oak Building 31, Room 4544
19 10903 New Hampshire Ave., Silver Spring, MD 20993-0002
20 OC-OCC-FDA-Litigation-Mailbox@fda.hhs.gov

21 I hereby certify that I have mailed by United States Postal Service the
22 document to the following non-CM/ECF participants:

23 Department of Health and Human Services
24 c/o General Counsel
25 200 Independence Avenue, S.W.
26 Washington, D.C. 20201

Xavier Becerra, Secretary
c/o General Counsel
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

I hereby certify that I have caused the document to be served by hand-delivery to the following non-CM/ECF participants:

U.S. Attorney Vanessa R. Waldref
United States Attorney's Office
Eastern District of Washington
920 W. Riverside Avenue, Suite 340
Spokane, WA 99201

I declare under penalty of perjury under the laws of the State of Washington and the United States of America that the foregoing is true and correct.

DATED this 24th day of February 2023, at Seattle, Washington.

/s/ Kristin Beneski
KRISTIN BENESKI, WSBA #45478
First Assistant Attorney General